

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

March 14, 2013

- I. **CALL TO ORDER** - The meeting was called to order at 1:31 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Owens, Chair; Carla Blanton, Mike Cravens, Frank Penn, Lynn Roche-Phillips, Carolyn Plumlee, and William Wilson. Eunice Beatty, Patrick Brewer, Will Berkley and Karen Mundy were absent.

Planning Staff Present – Chris King, Director; Bill Sallee; Tom Martin; Barbara Rackers; Chris Taylor; Cheryl Gallt; Dave Jarman, Denice Bullock; Jim Duncan; Janice Westlund; Cindy Deitz; Rob Johnson and Pam Whitaker. Other staff members in attendance were: Hillard Newman, Division of Engineering; Captain Charles Bowen and Lieutenant Greg Lengal, Division of Fire; Jeff Neal, Division of Traffic Engineering; Tim Queary, Department of Environmental Quality; Bettie Kerr and Amelia Armstrong, Division of Historic Preservation and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – The Chair reminded the Commission members that the minutes of the January 17, 2013, meeting had been previously distributed; and if there were no changes, those minutes were ready to be considered at that time.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson and carried 7-0 (Cravens and Penn abstained; Beatty, Brewer, Berkley and Mundy were absent) to approve the minutes of the January 17, 2013, meeting.

- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. PLAN 2013-17F: DISTILLERY DISTRICT (5/5/13)* - located at 1200 Manchester Street.
(Council District 2)

(2020 Land Surveying)

Note: The purpose of this final record plat is to subdivide one lot into three lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Denote 20' building line along Manchester Street frontage.
10. Denote: This property shall be developed in accordance with the approved final development plan.
11. Correct purpose of plat note.
12. Correct site statistics.
13. Provided the Planning Commission grants a waiver to Article 4-7(d)(1) - Certification of Substantial Completion.
14. Resolve floodplain configuration adjacent to CSX Railroad.
15. Resolve timing of street improvements (TIF).

Representation – Justin Drury, 2020 Land Surveying, was present representing the applicant, and requested postponement of PLAN 2013-17F: DISTILLERY DISTRICT to the March 28, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Plumlee and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to postpone PLAN 2013-17F: DISTILLERY DISTRICT to the March 28, 2013, Planning Commission meeting.

- b. ZDP 2012-76: DEERFIELD SHOPPING CENTER (3/14/13)* - located at 1949 Nicholasville Road.

(Vision Engineering)

Note: The Planning Commission postponed this plan at their September 27, 2012; January 17, 2013; and February 14, 2013 meetings. The Urban County Council approved the zone change request at their November 27, 2012, meeting.

The Subdivision Committee Recommended: **Postponement**. There are issues with the screening and buffering proposed adjacent to a residential subdivision.

Should this plan be approved, the following conditions should be considered:

* - Denotes date by which Commission must either approve or disapprove request.

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote current floodplain information on plan.
8. Denote record plan name.
9. Clarify site statistics (floor area).
10. Verify required parking for restaurant (square footage/seating ratios).
11. Addition of Nicholasville Road street cross-section and Collins Lane access easement cross-section.
12. Denote proposed and existing storm sewer locations to the approval of the Division of Water Quality.
13. Resolve utility line and proposed building conflicts.
14. Denote proposed storm water detention location to the approval of the Division of Water Quality.
15. Discuss tree protection, landscaping and buffering perpendicular to Nicholasville Road.
16. Discuss building height adjacent to residential uses.
17. Discuss disposition of existing improvements in Nicholasville Road right-of-way.
18. Discuss timing of revisions to the current FEMA floodplain.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant requesting postponement of ZDP 2012-76: DEERFIELD SHOPPING CENTER to the April 11, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to postpone ZDP 2012-76: DEERFIELD SHOPPING CENTER to the April 11, 2013, Planning Commission meeting.

- c. DP 2013-6: SAMS PROPERTY (AMD) (3/14/13)* - located at 2640 Spurr Road.
(Council District 2)

(Strand & Associates)

Note: The Planning Commission postponed this plan at their February 14, 2013 meeting. The purpose of this amendment is to add two industrial buildings.

The Subdivision Committee Recommended: Postponement. There were questions regarding the proposed uses, sanitary sewer service and the need for tree protection areas and improvements to Greendale Road and Spurr Road.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of fire hydrant, fire department connections and fire service features locations.
10. Division of Waste Management's approval of refuse collection.
11. Kentucky Transportation Cabinet's approval of the access to Greendale Road.
12. Denote tree protection areas.
13. Addition of owner/developer information.
14. Revise contour information (2' contours).
15. Denote construction access location.
16. Denote building heights.
17. Addition of proposed easements.
18. Denote septic drain field location for Lot 1 on plan.
19. Discuss reciprocal parking and access for new buildings.
20. Discuss proposed access nearest to railroad crossing.
21. Discuss parking and pavement conflict with existing tree areas along railroad lines.
22. Discuss possible improvements to Greendale Road and Spurr Road.
23. Discuss proposed uses and amount of pavement on Lots 2 and 3.
24. Discuss development of Lots 2 and 3 relative to timing of sanitary sewer service.

* - Denotes date by which Commission must either approve or disapprove request.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2013-6: SAMS PROPERTY (AMD) to the April 11, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Penn and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to postpone DP 2013-6: SAMS PROPERTY (AMD) to the April 11, 2013, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, March 7, 2013, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Mike Owens, Carolyn Plumlee, Frank Penn and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Chris Taylor, Dave Jarman, Denice Bullock, Cheryl Gallt and Barbara Rackers, as well as Captain Charles Bowen and Lieutenant Greg Lengal, Division of Fire; David Lyons, Division of Police and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

- Criteria:**
- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
 - (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
 - (3) no discussion of the item is desired by the Commission; and
 - (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
 - (5) the matter does not involve a waiver of the Land Subdivision Regulations.

- Requests can be made to remove items from the Consent Agenda:**
- (1) due to prior postponements and withdrawals,
 - (2) from the Planning Commission,
 - (3) from the audience, and
 - (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2013-16F: ELK HILL FARM (5/5/13)* - located at 4524 Russell Cave Road.
(Council District 12)

(Endris Engineering)

Note: The purpose of this final record plat is to subdivide a 192-acre lot into one 152-acre lot and one 40-acre lot. This plan requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s) and required street tree information.
 6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
 7. Complete adjacent property line (as dashed) along Kenny Lane (Tomoka Hills Farm).
 8. Resolve possible need for right-of-way dedication along Kenny Lane frontage.
 9. Denote: There shall be no additional access to Russell Cave Road.
2. DP 2013-17: R.T. JORDAN & MAN O' WAR PLACE (CANDIA CORP.- BELMONT RUN APARTMENTS) (AMD) (5/5/13)* - located at 1229, 1232 and 1234 Man O' War Place. (Council District 2)

(Endris Engineering)

Note: The purpose of this amendment is to add an addition and a new accessory building to the existing development, to revise the dumpster location and modify parking.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

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2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
 8. Division of Waste Management's approval of refuse collection.
 9. Correct Planning Commission certification, provide for signature and date.
 10. Correct open space provided in site statistics.
3. DP 2013-18: BEAUMONT FARM, UNIT 1, SEC. 5, LOT 7 (5/5/13)* - located at 1146 Monarch Street.
(Council District 10) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and all on-site pedestrian facilities.
 7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
 8. Division of Waste Management's approval of refuse collection.
 9. Clarify floor area ratio and required parking discrepancies.
 10. Locate 345 square feet of floor area (in excess of building dimensions) on site.
 11. Adjust proposed building envelope along rear property line to meet required 3:1 height-to-yard ratio.
4. DP 2013-19: BROOKHAVEN SUBDIVISION (AMD #10) (5/5/13)* - located at 2434 and 2450 Nicholasville Road.
(Council District 4) **(Wheat & Ladenburger)**

Note: The purpose of this amendment is to add building square footage and revise the parking.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
 7. Division of Waste Management's approval of refuse collection.
 8. Label and dimension all internal sidewalks.
 9. Denote the height (in feet) of existing and proposed buildings.
 10. Denote all proposed and existing easements.
 11. Clarify street cross-section information.
 12. Remove cross hatching for "new" sidewalks and depict the same as existing ones along the Rite Aid street frontage.
 13. Identify existing and/or proposed dumpster and loading dock information at the rear of building.
 14. Denote proposed outdoor seating in site statistics for restaurant "A."
 15. Delete "optional" on parking north of new building.
 16. Addition of street frontage in site statistics.
 17. Revise plan to demonstrate compliance with the minimum required off-street parking.
5. DP 2013-12: MORNINGSIDE MARKET (AMD) (5/28/13)* - located at National Avenue and North Ashland Avenue.
(Council District 3) **(Roberts Group)**

Note: The purpose of this amendment is to revise the building and parking at 720-740 National Avenue. This plan requires the posting of a sign and an affidavit of such. The Planning Commission originally approved this plan on February 14, 2013, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.

* - Denotes date by which Commission must either approve or disapprove request.

7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
8. Division of Waste Management's approval of refuse collection.
9. Document current occupancy rate relative to required public improvements.
10. Resolve dumpster location and service arrangement to the approval of Division of Waste Management.

Note: The applicant has requested a continued discussion to alter the cross-section and on-street parking arrangement for North Ashland Avenue.

The Subdivision Committee Recommended: **Approval**, subject to the original conditions.

6. DP 2011-91: RED MILE MIXED-USE DEVELOPMENT (5/24/13)* - located at 1200 Red Mile Road.
(Council District 11) **(Vision Engineering)**

Note: The Planning Commission originally approved this plan on November 11, 2011, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Correct cul-de-sac detail conflict with plan.
12. Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering.
13. Revise note #10 to read: "When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersection of Versailles Road and South Broadway.
14. Clarify site statistics to specifically read 168 units.

Note: The applicant has requested a continued discussion to revise the development layout.

The Subdivision Committee Recommended: **Approval**, subject to the original conditions, revising these conditions as follows:

12. ~~Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering~~ Correct note #8 and cross-sections to the approval of the Bike and Pedestrian Planner.
 13. ~~Revise note #10 to read: "When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersection of Versailles Road and South Broadway~~ Remove reference to open space in service area of Buildings 33, 34, 38 & 39.
 14. ~~Clarify site statistics to specifically read 168 units~~ Demonstrate compliance with Article 28-6 of the Zoning Ordinance.
7. DP 2013-24: SCIOTO MEMORIAL HOSPITAL (AMD) (5/27/13)* - located at 3051 Rio Dosa Drive.
(Council District 7) **(Haley Contracting)**

Note: The purpose of this amendment is to add 15 dwelling units and 372 square feet of floor area.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct Planning Commission certification.
9. Correct note #15 to meet current requirements.
10. Remove reference to DP 97-69 from plan face.
11. Remove reference to amendment #4 in title block.
12. Remove reference to previous design firm and add current.
13. Document ability to meet Article 21-4(e) of the Zoning Ordinance.
14. Revise lot coverage and square footage site statistics to include proposed 372 square-foot addition.
15. Denote final record plat information (Cabinet and Slide).
16. Denote FEMA floodplain and 25' setback per Article 26 of the Zoning Ordinance.

* - Denotes date by which Commission must either approve or disapprove request.

17. Review by Technical Committee prior to plan certification.

In conclusion, Mr. Sallee said that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission or the audience to permit discussion. He said that the staff had received an affidavit of the required posting of a sign for PLAN 2013-16F: ELK HILL FARM and DP 2013-12: MORNINGSIDE MARKET (AMD), adding that the documentation received for these requests appear to be in order.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. Deric Haley, Haley Construction, asked that DP 2013-24: SCIOTO MEMORIAL HOSPITAL (AMD) be removed from the Consent Agenda to allow further discussion.

The Chair noted that the applicant had requested for DP 2013-24 be heard by the full Commission.

Action - A motion was made by Mr. Wilson, seconded by Ms. Roche-Phillips and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to approve the items listed on the Consent Agenda, as recommended, removing DP 2013-24: SCIOTO MEMORIAL HOSPITAL (AMD).

- B. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action – A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to approve the release and call of bonds as detailed in the memorandum dated March 14, 2013, from Ron St. Clair, Division of Engineering.

- C. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

1. FINAL SUBDIVISION PLANS

- a. PLAN 2013-9F: FOREST PARK ADDITION, BLK E, LOTS 1, 2, 3 & 4 (A PORTION OF) (AMD) (4/7/13)* - located at 200 and 202 Waller Avenue. (Council District 3) **(Wes Witt)**

Note: The Planning Commission continued consideration of this item from their February 14th meeting. The purpose of this amendment is to subdivide two lots into three lots.

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the proposed buildable area and lot geometrics.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. Denote street frontage in site statistics.
8. Add required building lines to lots.
9. Revise owner and surveyor certifications.
10. Denote proposed access locations to public streets.
11. Discuss proposed lot size relative to proposed uses.

* - Denotes date by which Commission must either approve or disapprove request.

12. Discuss proposed lot geometrics.
13. Discuss the lack of buildable area on Lot 1.

Staff Presentation – Mr. Martin presented the amended final record plat for Forest Park Addition, Block E, Lots 1 through 3 and a portion of Lot 4, located at 200 and 202 Waller Avenue. He noted that the Planning Commission continued consideration of this item from their February 14th meeting.

Mr. Martin said that the purpose of this amendment is to subdivide two lots into three lots. He directed the Commission's attention to the rendered subdivision plan, and oriented them to the overall area and to the nearby street system. He said that these properties are zoned R-2 and are located at the corner of Waller Avenue and Elizabeth Street. He noted that, since the last Planning Commission meeting, the applicant had submitted a revised plan addressing the lot geometrics; and the primary change to this layout is a "cleaner" lot line that extends across the two lots and is now flush with the adjacent properties. The significant change with this new layout is that Lots 1 and 3 now become lots for a single family homes and Lot 2 now becomes a duplex lot.

Mr. Martin said that the staff is recommending approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
- ~~7. Denote street frontage in site statistics.~~
- ~~8. Add required building lines to lots.~~
- ~~9. Revise owner and surveyor certifications.~~
- ~~10. Denote proposed access locations to public streets.~~
- ~~11. Discuss proposed lot size relative to proposed uses. Revise note to denote that Lot 3 shall have a single family residence.~~
- ~~12. Discuss proposed lot geometrics. Revise the southern lot line for Lot 1 to extend approximately an additional 58.49' feet at its present bearing.~~
- ~~13. Discuss the lack of buildable area on Lot 1. Denote that the structure on Lot 1 is a non-conforming structure that is intended to remain.~~

Mr. Martin added that the applicant had met most of the conditions listed on the revised handout; however, condition #9 still has not been clearly denoted on their submission, and would need to be addressed prior to certification of this plan.

Planning Commission Questions – Mr. Penn asked if there are existing structures on these lots. Mr. Martin said that there are structures on Lots 1 and 2, but Lot 3 is vacant. He then said that, due to the building lines, the structure on Lot 1 is a non-conforming structure, which is why the staff had asked the applicant to denote that on their rendering (condition #9).

Mr. Penn then asked where the access would be located on these lots. Mr. Martin said that the plat identifies that Lots 2 and 3 would have driveway access off Elizabeth Street, and Lot 1 would have access off Waller Avenue.

Ms. Roche-Phillips asked if Lot 1 now has 7,600 square feet. Mr. Martin said that Lot 1 is just over the required minimum square footage. Ms. Roche-Phillips said that she is concerned with the language of condition #9, and asked for clarification to the portion that reads "structure is intended to remain." Mr. Martin explained that when these lots were platted in 1919, the houses were built over the platted building lines. This created a non-conforming structure on Lots 1 and 2. He then said that the structure on Lot 1 has recently been remodeled and will remain in its location.

The Chair asked where the parking would be located on these lots. Mr. Martin said that in the Infill and Redevelopment Area, parking is required to be behind the building line; and due to the restricted parking along the two existing street frontages, there is a small increase allowable to the maximum parking limit on the properties.

Representation – Richard Murphy, attorney, was present, along with his client, Mr. Craig Hardin. He said that they had met with the staff and submitted a revised plan addressing the lot geometrics of their proposal. He then said that from the staff's presentation, they believe conditions #7 and #8 can be removed from the list of conditions. Mr. Martin verified that the applicant had met those conditions. Mr. Murphy said that they are in agreement with staff's recommendation and requested approval, subject to conditions #1 through #6, and condition #9, removing conditions #7 and #8.

Planning Commission Questions – The Chair asked if the applicant could clarify their opinion of conditions #7 and #8. Mr. Murphy said that they have complied with those conditions and they are requesting that they be removed.

* - Denotes date by which Commission must either approve or disapprove request.

The Chair then asked for clarification to the parking situation for this proposal. Mr. Murphy said that they are required to have the parking located behind the building line, and on this proposal most of the parking would be behind those existing structures. The Chair then asked if the parking for all three lots would be combined into one parking area or if there would be separate parking areas. Mr. Murphy said that each lot would stand on its own; therefore, the parking would be separated.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to approve PLAN 2013-9F FOREST PARK ADDITION, BLK E, LOTS 1, 2, 3 & 4 (A PORTION OF) (AMD), subject to conditions #1 through #6, and condition #9, removing conditions #7 and #8.

2. DEVELOPMENT PLANS

- a. DP 2013-11: BERRY HILL DEVELOPMENT B-6P PROP., LOTS 1 & 2 (AMD) (4/27/13)* - located at 3449 Buckhorn Drive. (Council District 7) **(Randy Martin)**

Note: The purpose of this amendment is to add new building square footage on Lot 2 and revise the parking layout.

The Subdivision Committee Recommended: Postponement. There were questions about the resolution of the drainage problem associated with the existing detention basin.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
8. Division of Waste Management's approval of refuse collection.
9. Division of Water Quality's approval of the resolution of the drainage problem associated with the existing detention basin.
10. Document that tree canopy requirements will be met for Lot 2.
11. Correct plan title.
12. Delete note #7.
13. Clarify pavement, median and landscape areas at the rear of Lot 2.
14. Discuss building setback from main shopping center exit lanes.

Staff Presentation – Ms. Gallt presented the amended development plan for the Berry Hill Development B-6P Property, Lots 1 & 2, located at 3449 Buckhorn Drive. She directed the Commission's attention to the rendered plan, to the overall area and to the nearby street system. She said that this site is located just off Man O' War Boulevard, near Old Squires Road. The purpose of this amendment is to add a new building on Lot 2 and to revise the parking layout.

Ms. Gallt said that the Subdivision Committee had recommended postponement of this plan due to questions about the resolution of a drainage problem associated with the existing detention basin. She then said that the staff had received information that the applicant and the Division of Water Quality had met on site and identified the necessary corrections needed to the drainage problem. She added that the staff had also received a revised submission for this plan, which addressed several of the "clean-up" issues. Therefore, the staff is recommending approval of this plan, subject to the following revised requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
8. Division of Waste Management's approval of refuse collection.
9. Division of Water Quality's approval of the resolution of the drainage problem associated with the existing detention basin.

* - Denotes date by which Commission must either approve or disapprove request.

10. Document that tree canopy requirements will be met for Lot 2.
11. Correct plan title (6th Amended Final Development Plan for Berry Hill).
12. Delete note #7.
13. Clarify pavement, median and landscape areas at the rear of Lot 2 Label canopy on Lot 3.
14. ~~Discuss building setback from main shopping center exit lanes.~~

Representation – Randy Martin was present, and said that he is in agreement with the staff's revised recommendations and requested approval of this plan.

Planning Commission Comment – The Chair asked if anyone on the Commission wished to discuss this request. There was no response.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to approve DP 2013-11: BERRY HILL DEVELOPMENT B-6P PROP., LOTS 1 & 2 (AMD), subject to revised conditions as provided by the staff.

- b. DP 2013-24: SCIOTO MEMORIAL HOSPITAL (AMD) (5/27/13)* - located at 3051 Rio Dosa Drive.
(Council District 7) **(Haley Contracting)**

Note: The purpose of this amendment is to add 15 dwelling units and 372 square feet of floor area.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct Planning Commission certification.
9. Correct note #15 to meet current requirements.
10. Remove reference to DP 97-69 from plan face.
11. Remove reference to amendment #4 in title block.
12. Remove reference to previous design firm and add current.
13. Document ability to meet Article 21-4(e) of the Zoning Ordinance.
14. Revise lot coverage and square footage site statistics to include proposed 372 square-foot addition.
15. Denote final record plat information (Cabinet and Slide).
16. Denote FEMA floodplain and 25' setback per Article 26 of the Zoning Ordinance.
17. Review by Technical Committee prior to plan certification.

Staff Presentation – Mr. Martin presented the amended development plan for the property located at 3051 Rio Dosa Drive. He directed the Commission's attention to the rendered plan, and oriented them to the area and to the nearby street system. He said that this site is located just off Richmond Road, near the intersection of Man O' War Boulevard and Rio Dosa Drive. He then said that, currently, there is an assisted living facility and a retirement community, including a memory center on the north side of Man O' War Boulevard; adding that, to the west of this development is a treatment facility.

Mr. Martin briefly explained the history behind this development, and said that in 1997 the Board of Adjustment had approved a conditional use permit that allowed the memory center to be constructed at the corner of Rio Dosa Drive and Man O' War Boulevard. He then said that the Planning Commission had previously approved a development for 165 dwelling units on this site, which was later amended to increase the number of units to 175. Now the applicant is proposing to amend the development plan once again to add 15 more units, for a total of 190 independent dwelling units. He said that this amendment is strictly to the interior of the building and nothing is being proposed to the exterior of the building. He said that the Planning Commission does govern the number of units that are allowed in a building; therefore, approval of this request is needed to allow these 15 new units.

Mr. Martin noted that the applicant submitted this request as a "late plan". It was reviewed by the staff, as well as the Subdivision Committee, who recommended approval of this plan, subject to the conditions listed on today's agenda. He then said that, since the Committee meeting, the applicant submitted a revision to the staff late Wednesday; unfortunately, the staff was not able to fully review their changes. However, the staff did briefly review the applicant's submittal and noticed that they had made progress in addressing some of the "clean up" items that were listed. In an attempt to move forward with this request, the applicant has met with the staff

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members from the different government agencies and would be requesting that condition #17 be removed from the requirements.

Mr. Martin said that since there is no exterior work being done, and the only change is to the interior portion of the building, the staff is comfortable with removing the Technical Committee review requirement.

Planning Commission Questions – Ms. Roche-Phillips asked if the addition of the new dwelling units requires State approval. Mr. Martin replied that the staff is unsure.

Mr. Wilson asked why the applicant wants to waive the Technical Committee review. Mr. Martin said that it is the staff's understanding that the applicant had started on the construction; but due to issues with the scheduling and timing with the other contractors, they are trying to coordinate and move this project along. He then said that the applicant can further elaborate on their justification as to why they want to waive the Technical Committee review.

The Chair asked if waiving the Technical Committee review is "putting the cart in front of the horse." Mr. Martin said that the work being done is internal to the building, and there are no issues that the staff is aware of for that construction. He then said that the applicant has made an effort to clean up the development plan, and they have met with some of the governmental agencies regarding this proposal. He added that the staff is comfortable with the applicant's request.

The Chair confirmed that the applicant submitted the development plan revisions to the staff late Wednesday. Mr. Martin replied affirmatively. The Chair clarified that the staff does not have a list of revised conditions for the Commission to consider. Mr. Martin said that the staff was not given enough time to make a revised recommendation on this development plan, but the applicant had revised at least 5 clean-up conditions and met with several different divisions regarding their signoffs on this proposal.

Representation – John Hill, Foster-Roland, and Deric Haley, Haley Construction, were present representing the applicant. Mr. Hill said that they are in agreement with the staff's recommendations and requested approval.

Planning Commission Questions – Mr. Penn asked why this plan was filed late and why the Commission should waive the Technical Committee review. Mr. Hill explained that, in the recent past, the Division of Building Inspection had authorized several permits to subdivide a two-bedroom apartment to two one-bedroom apartments. He then said that when the applicant had requested the same type of permit, Building Inspection informed them that this type of request needed to be considered by the Planning Commission. He then said that Mr. Haley was not aware of this issue since Building Inspection had already granted this type of permit in the past. Now the project is running behind, and they are on a time schedule to have this project completed. He said that since the work is interior to the structure, they are requesting the Commission to waive the Technical Committee review process.

Mr. Penn asked if the Richmond Place had decided to subdivide more units after the initial start. Mr. Haley explained that they had received a permit from Building Inspection to subdivide 5 apartments into 10 apartments. That project was successful, so the applicant wanted to continue to subdivide two-bedroom units to one-bedroom units because one-bedroom units were being occupied faster than the two-bedroom units.

Mr. Haley said, in response Ms. Roche-Phillips previous question, that these new dwelling units are part of an assisted living facility and do not fall under any State regulations.

Mr. Wilson clarified that the issue with this request is the timing of the construction, which Mr. Haley confirmed. Mr. Wilson asked how long the project has been behind schedule. Mr. Hill said that due to the error made by Building Inspection, the project will be behind schedule for a month and a half.

The Chair asked for clarification to condition #14. Mr. Hill said that condition #14 references an existing outside refrigeration unit that is not part of this amendment.

Ms. Roche-Phillips asked if there would be exterior improvements or changes to the site plan. Mr. Hill replied negatively.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson and carried 7-0 (Beatty, Brewer, Berkley and Mundy were absent) to approve DP 2013-24: SCIOTO MEMORIAL HOSPITAL (AMD), subject to conditions as listed by the staff, deleting condition #17.

VI. COMMISSION ITEM – The Chair will announce that any item a Commission member would like to present will be heard at this time.

A. BOAR 2013-1: WILLIAM KEVIN MURPHY – an appeal of the Board of Architectural Review's issuance of a Certificate of Appropriateness on an adjoining property at 137 W. Bell Court. (Council District 3)

Note: This appeal was postponed by the Commission at its January 31, 2013, meeting.

The Staff Recommended: **Disapproval**, and that the decision of the BOAR be upheld, for the following reasons:

1. Issuance of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of a request, based on the Design Guidelines established by the local Historic Preservation Commission. In this case, all of the Guidelines cited by the Historic Preservation staff in its report to the BOAR appear to be equally applicable and support the BOAR's decision.
2. The property owner/applicant met the conditions set forth by the Board of Architectural Review in their 2001 action to approve the deck specific to providing a plan for lowering the proposed deck, as well as a landscape plan. These conditions were met prior to the issuance of the COA and are therefore not reflected as conditions on the permit.
3. Even if a condition for landscaping had been imposed by the Board in 2001, the trees that were recently removed and that are being questioned with regard to this appeal were not of the size that require BOAR approval or even a staff-issued permit. It was the right of the property owner to remove those trees and request a further change to the property, which has been done and was subsequently approved by the BOAR in a public hearing.

Staff Presentation – Ms. Rackers said that this is an appeal made by Kevin Murphy with regard to the Board of Architectural Review's issuance of a Certificate of Appropriateness for property located at 137 W. Bell Court. She directed the Commission's attention to the zoning map, and said that the subject property is located on the northwest corner of the intersection of West Bell Court and Sayre Avenue, just off of East Main Street. She added that the subject property is in the Bell Court Historic District/neighborhood, contains approximately 8,250 square feet, with 2-story residence that is a little over 3,600 square feet in size.

Ms. Rackers then directed the Commission's attention to the site plan and said that, in June of 2001, a Certificate of Appropriateness was issued for an addition and a deck to be constructed at the rear of the home. She then said that in August of 2012 an extension to that deck was requested, as part of a larger project, that included a patio and additional landscaping. She noted that the patio and landscaping were approved at staff level, but the deck was referred to the BOAR, which approved a Certificate of Appropriateness (COA) on November 14, 2012.

Ms. Rackers said that the appellant had submitted a letter stating that the BOAR "had failed to recognize a previous condition that required the approval of a landscape buffering plan when the original deck was approved," and that "by not recognizing that condition, the landscaping that was installed in 2002 was removed in 2012, which is in violation of the 2001 BOAR approval." She said that prior to the November hearing, the appellant had filed an Open Records Request for the 2001 BOAR hearing to obtain what he thought had been an imposed condition regarding landscaping associated with the improvements that had been made to the property. Generally, when the Board approves a change to a property, any conditions imposed by the BOAR are listed the Certificate of Appropriateness. However, if an appellant chooses to fulfill those conditions imposed by the BOAR before the COA is issued, then those conditions would not show on the printed version of the CAO, which is the case in this situation.

Ms. Rackers said that there are no transcribed minutes of the 2001 BOAR hearing; however, there is an audio recording of the full meeting. According to that audio, the BOAR's discussion and action reflected the Historic Preservation staff's recommendation for approval as well as conditions. She then said that the recommendation had noted that all exposed wood would be painted or stained, and the final details of the front porch railing would be provided to the staff. She added that the Board also added two conditions that said the deck elevation was to be lowered in order to not require a guardrail, and that the staff would review and approved a planting plan prior to issuance of the COA. She indicated that the appellant had done what was required and submitted the required plans to the staff. It was subsequently approved, which allowed the COA to be issued without conditions being listed.

Ms. Rackers stated that at the November 2012 hearing, Mr. Murphy had asked the Board to clarify the applicability of the landscape condition that was originally imposed, as he resides next door to 137 W. Bell Court; and it was his contention that the trees were removed when the deck was extended, which was in violation of the original (2001) conditions. She added that Mr. Murphy felt that the deck caused an invasion of his privacy, and asked the Board to come up with some solution to make the deck more compatible with his property. She said that, in response to the Board's questions, Scott Campbell, who is the landscape designer, had explained that the proposed trees along the fence are tall and columnar in nature, and are fast growing. He also said that these trees are very easily managed, and would fit easily into the space between the deck and fence. He added that these trees would provide a green fence between the two properties as they mature, and the general life expectancy is 30 years or more, which is longer than the redbuds that had been removed.

Ms. Rackers said that during the discussion between the Board members and Mr. Murphy, Mr. Murphy contended that because the trees were required at the time of the original deck approval, they should not have been removed, and their removal was in direct violation of the condition imposed by the Board. She then said that if that interpretation is taken to its logical conclusion then no other changes can be made to a property, which is not the case. She added that as long as the proper channels are followed and an appellant receives approval, then future changes can be made to a property. Ms. Rackers said that, for this case, the removal of the trees was the right of the property owner since their diameter was less than 10;" therefore, not requiring the staff's or the Board's approval. Ms. Rackers said that it was noted by one BOAR member that this was not a matter of violating or complying with the Design Guidelines, but was an issue of privacy and noise, which is something that needs to be

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worked out between property owners, not the BOAR. He added that if given the opportunity, the trees would mature and provide sufficient screening. She said that in Mr. Murphy's final remarks to the Board, he cited Article 15 of the Zoning Ordinance, which requires an additional inch of yard space from the property line for every foot a structure exceeds fifty feet. She noted that Mr. Murphy contended that since the deck does extend out further, the setback from the property line should be set accordingly. She said that a deck is a structure, but Article 15 applies to buildings and that decks are not regulated in the same manner as a building is. She then said that the BOAR members acknowledged and said that they understood Mr. Murphy's concern; however, this proposal was in compliance with the Design Guidelines, and voted unanimously in favor of the request.

Ms. Rackers said that the Historic Preservation staff had cited the following six Design Guidelines in their report submitted to the BOAR:

- II.A.1.A Decks/Patios/Verandas/Balconies should be located at the rear of buildings.
- II.A.1.B. Decks/Patios/Verandas/Balconies should be stained or painted to match. (Note: Treated lumber should season for an adequate time prior to applying finish.)
- II.A.1.C. Decks/Patios/Verandas/Balconies should be simple rather than ornate in design. It is recommended that wood decks have square wood balusters set no more than three inches apart. Balusters should be no more than 2" in width and depth.
- II.A.1.D. Decks/Patios/Verandas/Balconies: Railings should continue the line and spacing of existing balustrades.
- III.7.A. Landscape elements and site elements should not be visually intrusive or suggest a false sense of history.
- III.7.B. Landscape elements and site elements: open space should only be developed in scale, use and character with the site and the local historic district.

Ms. Rackers then said that these guidelines apply to the location and method of construction, as well as the development of open space. She added that the intent is to not be visually intrusive and that any construction should fit with the historic district and the individual property. In reviewing this case, the Planning staff could find no flaws in either the staff's or the BOAR's review and determination of appropriateness. It is consistent with their charge, which is to interpret and apply the adopted Design Guidelines in determining appropriateness of a specific request. She said that the staff is recommending disapproval of the appeal, and that the decision of the BOAR be upheld, for the reasons listed on the agenda.

Planning Commission Questions – The Chair clarified that a condition of the original request was to lower the height of the deck. Ms. Rackers replied that the height of the deck was questioned with regard to whether or not a guard rail would be required, so the property owner lowered the deck. The Chair then asked the height of deck, to which Ms. Rackers responded that the Preservation staff could likely answer that question.

Historic Preservation Presentation – Ms. Armstrong submitted into the record the Certificate of Appropriateness application, Article 13 of the Zoning Ordinance (Historic Preservation section) and the Design Guidelines. She presented several photographs to the Commission and gave a brief description of each (a copy of each of the mentioned items is attached as an appendix to these minutes), as well as a brief history of the case. She concluded by requesting that the Planning Commission uphold the BOAR decision by disapproving this request.

Planning Commission Questions – Ms. Roche-Phillips asked if the deck had lights. Ms. Armstrong said that the deck itself does not have lights- only the steps, as shown in the picture.

Ms. Plumlee asked if the trees shown in the picture are still on the property. Ms. Armstrong replied yes, adding that the pictures were taken in January of this year.

Appellant Presentation – Kevin Murphy, who resides at 141 W. Bell Court, was present. He said that it is not his intent to malign any individual, group, organization or institution by filing this appeal. He then said that he has lived next to Mr. Jones for 14 years and they have never had any unpleasant words.

Mr. Murphy gave a brief description of his background, and said that he is a licensed architect in the state of Kentucky. He currently teaches at the Bluegrass Community and Technical College and he had been the president of the Bell Court neighborhood association. He added that he continues to be involved in neighborhood activities; and the 2006, he was involved in the Comprehensive Plan update. He said that he has had experience as a planner and a building inspector and had dealt with BOAR cases as a staff member of the Division of Building Inspection. Mr. Murphy said that he supports historic preservation.

Mr. Murphy said that his goals are to protect his property and to establish the validity and enforceability of the 2001 conditions of approval by the Board of Architectural Review for 137 W. Bell Court by showing discrepancies with what had been shown. He then said that it was noted in the staff's report that he did file an appeal with the Board of Adjustment concerning the applicability of building codes with this project; however, after a meeting with the Division of Building Inspection, it was suggested that he withdraw his request and bring it before the Planning Commission as a review of how decks should be addressed by the Ordinance. He noted that one of the staff members of Building Inspection was surprised that there was no definition in the Zoning Ordinance for a deck.

Mr. Murphy presented a packet of information to the Commission, and gave a brief description on each exhibit (a copy of the mentioned items is attached as an appendix to these minutes). He said that the 2001 packet includes his objection letter to the Division of Historic Preservation; a self-prepared transcript of the meeting in 2001 from the audio recording, which includes

a 4th condition that was included in the approval and motion regarding staff approval of a planting plan; and the 2001 Certificate of Appropriateness. He then directed the Commission's attention to the 2012 packet and said that he asked the Historic Preservation staff to investigate the work that was being done in the rear yard off the Jones property, and that investigation Mr. Jones to go before the BOAR. He then said that the BOAR approved the extension of the deck, but the walkway and patio were approved "in-house." Mr. Murphy said that he objected to the deck extension because the request was more than doubling the deck size rather than merely extending it. He then said that he reminded the staff of the landscape plan condition that was approved by the BOAR in 2001, which was added to provide an adequate screening between the two properties.

Mr. Murphy said that he had submitted an open records request, only to find that there were no minutes generated from the 2001 meeting, and there was no condition added that pertained the landscape plan on the Certificate of Appropriateness. However, in the file there were hand-written notes from the staff to Alan Hisel (project architect) requesting that the landscape plan be submitted to the staff. Based on that evidence and the staff's notes regarding the landscape plan, he filed this appeal to the Planning Commission regarding the Certificate of Appropriateness for property located at 137 W. Bell Court.

Mr. Murphy continued noting that the appeal was placed on the January 31st Planning Commission agenda and he requested a copy of the staff's report prior to that meeting; however, the staff report was not made available until the day before the meeting. He then said that after reviewing the staff report, he requested a two-week postponement, and made another open records request for certain documents that he was not shown in the first open records request. Due to unforeseen circumstances during the month of February, he requested that this case be postponed to today's meeting. He said that he met with Richard Murphy, attorney for Mr. Jones, in an attempt to resolve this matter; however, it was noted that Mr. Jones did not want to resolve it prior to this meeting.

Mr. Murphy said that he submitted another open records request for (545 Sayre Avenue) regarding the landscape screening and the conditions of approval made by the BOAR. He said that he wanted to illustrate the importance of listing all conditions of approval on the Certificate of Appropriateness because this ensures compliance on a property. He said that in reviewing the minutes for 545 Sayre Avenue, it was noted that a condition would be added to provide screening from car lights. He then said that that property owner had planted Holly trees; but, due to the drought, those trees had died. Mr. Murphy said that he informed the staff in order for the landscaping requirement to be enforced, and now there are mature Holly trees on this property. He added that replacing those trees would not have happened without that note on the COA.

Mr. Murphy said that Article 13-3(c) reads that the Certificate of Appropriateness shall also delineate any conditions imposed by the Board or the Historic Preservation Officer in approving the request. He asked how a condition can be omitted prior to the COA being issued, and asked if those conditions aren't still conditions even if they have been met. He noted that, in speaking with Dewey Crowe, it was suggested that a text amendment would be a more positive approach – i.e., for the Planning Commission to direct the staff regarding possible changes to the existing Ordinance to better define decks and their locations. He then said that the Design Guidelines note that new construction of rooms, additions, porches, decks and so forth should respect the visual and historic character of existing buildings, sites, the streetscape, district or landmark. This is accomplished through the reinforcement of scale, materials and overall design of neighboring buildings; new construction that does not necessitate the removal of significant historic fabric is an asset. At this time, he presented several photographs to the Commission and gave a brief description of each (a copy of the mentioned items is attached as an appendix to these minutes).

Planning Commission Questions – Ms. Roche-Phillips asked Mr. Murphy if the issue is the removal of the landscaping buffer that was placed as part of the 2001 approval. Mr. Murphy replied affirmatively and said that, even though there are no minutes to review, he is trying to establish that the landscape buffer is a condition; and as part of his argument, he asked how the deck can be extended without amending the required landscape plan. He added that the audio clearly said that deck is to stop at a certain location and landscaping is to be provided in that area.

Ms. Roche-Phillips clarified that Mr. Murphy's concerned is the 2001 landscape buffer and the removal of the Redbuds. Mr. Murphy said that it was unclear as to what was required for the landscaping buffer. Ms. Roche-Phillips then asked if there is a landscape buffer in place. Mr. Murphy said that there is a landscape buffer, but there is no condition on the COA to keep that buffer in place, and he is concerned with the next property owner. He then said that in 2001 it was clear that those trees were part of the BOAR approval and that the landscaping would be replaced if it were to be removed for whatever reason.

Audience Comments – Richard Murphy, attorney, was present representing David Jones, who is the property owner for 137 W. Bell Court. He said that they are pleased with the BOAR's decision and wanted to make it clear that his client is not appealing their decision. He then said that his client had followed the proper procedures in obtaining the approval of the deck extension.

Mr. Murphy presented a packet to the Commission and gave a brief description of each exhibit (a copy of the mentioned items is attached as an appendix to these minutes). The packet includes the 2012 Certificate of Appropriateness with the conditions of approval listed; two building permits that the Division of Building Inspection had issued for the deck extension in 2012 and the elevated deck and house addition that was issued in 2001; the 2002 Certificate of Appropriateness and a portion of Article 13 related to what is and what is not required to obtain a permit within the historic district. Mr. Murphy said that routine maintenance, repair and installation, such as pruning trees and shrubbery and removal of trees less than 10' in diameter do not need a permit.

Mr. Murphy presented several photographs to the Commission and gave a brief description of each (a copy of the mentioned items is attached as an appendix to these minutes). He said that his client had hired a landscape designer, who removed two Redbuds due to their health and replaced those with two different species. He then said that his client is in compliance with what was required, and now the BOAR decision is being questioned, as to whether or not the deck is appropriate. He noted that the BOAR does not get involved in whether or not a deck meets code because that is the responsibility of the Division of Building Inspection. He said that the BOAR does not get involved with privacy issues between neighbors or the setbacks of properties. What the BOAR does deal with is if the property owner wants to change their house, if that change is architecturally compatible with the historic district. He said that the BOAR references the adopted Design Guidelines to make a determination on a request; and as for the deck, the staff has listed the ones that are applicable in their staff report. He added that the BOAR found that his client's request was in compliance with the six Design Guidelines cited by the staff in their report submitted to the BOAR. He briefly reviewed those Guidelines, noting that the deck complies with all six that had been cited.

Mr. Murphy said that the issue in this case is with the condition that was "added" in 2001, if it had been complied with, and if it should be carried forward. He said that he had reviewed the audio and agreed that one of the Board members said that a fourth condition should be added that allowed the staff to approve a planting plan, but it was also stated by another Board member that screening should extend from the corner of the existing structure to the edge of the proposed deck; and that a planting plan should be submitted to staff. That was done, and the plan showed Arborvitae. Mr. Murphy asked if that means the Arborvitae must remain as planted forever and opined that it does not, because the purpose of the historic zone is not to "freeze" a house in time, but to allow living conditions to change. However, those changes must be architecturally compatible with the historic district. He said that when the BOAR reviewed his client's case, the only question is if a mistake was made in not holding his client to the Arborvitae (an evergreen species) that had previously been there. He then said that the Ordinance allows landscaping to be changed, as well as removal of a tree if it is less than 10" in diameter. He added that the BOAR conditions are not like the Commission's conditional zoning restrictions. His client had to comply with the Certificate of Appropriateness in 2001 and continued to comply with those requirements when the deck was installed. He said that they do not need to be held to any other conditions when no one else is, and they are in agreement with the BOAR's 2012 decision. They understand that if there are any other significant changes, his client will need the approval of the BOAR. He said that if the Commission wants to require conditions to be in perpetuity, then a text amendment should be initiated, which would require both public comments and staff review.

In conclusion, Mr. Murphy said that his client has followed the proper procedures to obtain approval from the staff and the BOAR, and requested that the Commission uphold the BOAR's decision.

Rebuttal – Kevin Murphy said that the main issue was whether or not there was a condition added as part of the approval that pertained to the landscaping in 2001. He then said that the Historic Preservation staff and the Planning staff have kind of said that there was a condition imposed at that time, but it is not a condition that is "in perpetuity" and it is not a condition that was placed on the COA; therefore, that condition maybe just goes away. He then said that in 2001, Exhibit #2, shows that the planting plan was a 4th condition imposed by the BOAR that allowed an addition, a deck and a porch to be built. Mr. Murphy said that it was mentioned that trees less than 10" in diameter can be removed, but this statement refers to historic plantings and should not be confused with the planting plan was intended to be part of the condition of approval. He then said that the trees on the Jones property are not historic, but they are part of the approval for the room addition, the deck and the porch. Mr. Murphy then said that, despite his plea to consider the previous condition, this evidence was not presented to the BOAR at the November 2012 meeting when they made their recommendation of approval. He said that if there is new evidence that was not previously presented and that is bought out, the BOAR is obligated to rehear that case.

Bettie Kerr, Historic Preservation, said that Kevin Murphy was correct in saying that the BOAR did not hear any evidence of the imposed condition because that condition does not exist. She then said that the homeowner had complied with the Board's request by submitting the planting plan in advance to the staff. She added that this case is similar to many other cases, and an appellant can request whatever change he/she wants; and in doing so, the staff and the Board review the request to determine how it fits in with the Design Guidelines. She said that, for both the 2001 and the 2012 requests the appellant asked for the deck and the planting; in turn, the Board determined if their request fit with the Design Guidelines. Ms. Kerr said that the reason a condition was not brought forward was that the Board was already reviewing the appellant's request, which included the planting. She said that this process does not order home owners to do additional work, unless it something that is so closely tied with what is being requested that it would be impossible to accomplish what was being requested without doing so. She then said that the Board only reviews what is being requested by the appellant and the COA is a reflection of the request and what was and was not approved. She added that the 2001 comment from the Board was a directive to the staff to review the planting plan. Ms. Kerr said that there are misperceptions as to what the H-1 process can do. The Board can finesse details of a project, and those things appear as conditions of approval. For example, this may include the location or scale of a window, which is then listed on the COA for the current and future requests. She added that the 2001 request was very typical of other projects where the appellant wanted to build a deck and provide landscaping. At that time, the staff was in charge of approving the landscape proposal, which they did. She said that with the 2012 case, the staff was empowered again to approve the landscape plan; but the proposed deck extension was heard by the Board. She then said that even if a property owner is approved for a certain request, they are not obligated to move forward with that approval, and they would just let the permit expire. If a property owner has a violation that pertains to public safety, that violation is under Code Enforcement's purview and the property owner is ordered to make the necessary changes. Ms. Kerr said that the BOAR process is driven by the property owner and what they are electing to do on their property. She then said

that the conditions imposed in 2001 were met; and as for the 2012 situation, there were no conditions imposed by the BOAR, other than what the appellant had volunteered to do.

With regards to the open records request, Ms. Kerr said that all of the files were made available to Mr. Murphy for his review each time. She then said that his claim that the planting plan was not provided is wrong, since it has been in the file this entire time. As for the permit issued at 545 Sayre Avenue (Bell House), there is a difference between that request and this request and those trees were specifically to respond as an additional piece to something that was being approved. Ms. Kerr confirmed that a property owner can remove a tree that is less than 10" in diameter; therefore, Mr. Jones did not need the approval of the staff or the Board to remove what was previously planted. She concluded, noting that unfortunately there are past meetings that do not have minutes available due to a shortage of staff; but they do have a record through other means, such as audio.

Planning Commission Comments – Ms. Roche-Phillips asked, even though it was not articulated on the paper copy, if the landscape buffer was requirement on the 2001 COA. She said that the record shows that the landscape condition was intended to be part of that recommendation; and, due to the issue of the staffing in that Division, that condition did not get incorporated onto the Certificate of Appropriateness. She then said that the issue as to why that condition was not included in the COA was related to the same reasons that there are no minutes for that meeting. She added that the appellant's transcript clearly shows the Board's intention; so that being the case, the BOAR did not have all the evidence to render an appropriate decision in 2012. Ms. Roche-Phillips said that the deck was included in all of the elements for the improvements in 2012 and everything was made in accordance with the BOAR Guidelines, but there was no stipulation for the landscaping. She then said that she does not know what the appropriate procedure would be, but she wanted this case to be reheard by the BOAR to allow them to reconsider their decision and revise the COA to require the landscape buffer to be maintained in perpetuity. It is clear that the idea was to create a screening between these two properties, and a condition was not enforced with the 2012 COA because it was not picked up from the 2001 BOAR approval. Ms. Roche-Phillips said that the BOAR should revise the 2012 COA to ensure that the landscaping buffer will be maintained for the duration.

Ms. Blanton said that, in reviewing the COA from the 2012 meeting, there was no requirement for the landscape screening along the new deck, so that leads her to question why there would be a requirement added for the older deck. She then said that it is obvious that this is not something the BOAR deems to be under their purview; otherwise, screening would have been proposed along with the new deck. She added that the two COAs are appropriate and consistent; and as it was stated, this is not typically something that is added as a condition. Ms. Blanton said that she believes that the BOAR made the correct decision in this case.

Mr. Penn said that he is reviewing this case on the merits of whether or not the appeal should be upheld or approved. He then said that, as to whether or not a condition was or was not intended is a great question; but that is not why the Commission is being asked to review this case today. He added that additional landscaping is done to be neighborly, to screen out something you don't want to see, among other reasons. The BOAR did not have any reason to require the landscaping to be a certain length, and he understands the reasoning behind the appellant's request. However, the landscape screening is immaterial with what is being requested of the Commission at today's meeting.

The Chair said that, in listening to the testimony on this request, the issue was about the process. He then said that, whether it was right or wrong, Kevin Murphy is asking for help to provide some protection as far as the landscaping is concerned. He added that, whether or not a landscaping condition should have been on the COA, a landscape plan was put forth. He noted that the staff had stated that the BOAR approved the deck, but the staff had approved the patio and the landscaping. He said that he understands that landscaping must be pruned and perhaps removed; and Mr. Jones's intent in providing adequate screening between these two properties has been done quite well, but he would like to see some type of protection.

The Chair said that he would be in favor of disapproving the appeal, but would like to see that there be some sort of benefit for Kevin Murphy for inclusion of a landscape plan in the BOAR records in the Certificate of Appropriateness; if that is where it should be. He then said that this request is more process related and the intent of both neighbors is for the benefit of the neighborhood. He asked if a landscape plan can be attached to this request through an amendment. Ms. Kerr said that the staff had approved the landscape plan and the patio in August of 2012. She then said that that document is in the file and can be reviewed if needed, as part of the record.

Ms. Roche-Phillips asked if the landscape plan with the Cypress trees was part of the permanent record for the COA conditions, if it could be amended. Ms. Kerr said that the staff would need to consult with the Law Department on whether or not a landscaping condition could be in perpetuity, because that could become problematic. Ms. Roche-Phillips said that she applauds Mr. Jones for keeping the intent of the landscaping and carrying it forward. Ms. Kerr said that the current property owner has had landscaping through this entire process. She explained that Mr. Jones had removed some landscaping in the summer and then obtained his permit in the fall, at which time he carried out the landscape plan that had been discussed today and that currently exists on this property. She then said that the landscaping is not tied to the deck, for that to happen, it would require additional action from the BOAR.

Action - A motion was made by Ms. Blanton, and seconded by Mr. Cravens for disapproval, upholding the decision of the BOAR, for the reasons provided by the staff.

Discussion of Motion – Ms. Roche-Phillips asked if this is the appropriate action if the Commission wanted the BOAR to revisit the COA for this property to incorporate the landscape plan. Tracy Jones, Law Department, suggested that the Commission make a

* - Denotes date by which Commission must either approve or disapprove request.

separate motion. Ms. Roche-Phillips asked how the Commission could incorporate the landscape plan. Ms. Jones suggested that the Commission take action on the appeal and then make a separate recommendation regarding the landscape plan.

The motion carried 6-0 (Plumlee opposed; Beatty, Brewer, Berkley and Mundy were absent).

Action - A motion was made by Ms. Roche-Phillip, and seconded by Mr. Wilson to recommend that the BOAR review the landscape plan, as part of the Certificate of Appropriateness.

Discussion of Motion – Mr. Cravens said that the landscape plan is in the file and part of the record. Mr. Kerr said that the Board mandates certain items for staff approval to provide a smoother process. The landscape plan has been approved by the staff and is in the file, and it is attached to the permit. Mr. Cravens asked if there was existing landscaping before Mr. Jones applied for the deck permit. Ms. Kerr replied affirmatively, and said that the Board was fully aware that there was already landscaping on the property. She then said that if the landscaping was not in place, the Board would have considered that issue and asked what Mr. Jones was proposing. Mr. Cravens said that this is similar to a development plan; and if a landscape condition is listed, the Commission considers the existing landscaping in place of new landscaping.

Mr. Penn said that this motion is not necessary, and the Certificate of Appropriateness should not be restamped. He then said that had there been minutes or other records for the Commission to review, it would have made this case a lot easier. For the Commission to backtrack and place a condition on the COA is overkill. He added that, from the start, there was the intent to have landscaping on this property.

Ms. Blanton said that this type of issue can be handled at the staff level and the Commission needs to consider the BOAR process instead of adding another layer of bureaucracy. Ms. Roche-Phillips said that she does not believe that this would add another layer of bureaucracy to the process, and since there are two different time sequences of when the landscaping and the deck were approved, she is requesting that those approvals be linked together. She added that if this would take another COA being issued by the BOAR, then so be it, and if it can be done by the staff, that is a good thing. She said that there needs to be some way to have those two approvals linked together. The Chair agreed with Ms. Roche-Phillips' comments.

Richard Murphy said that the BOAR is not in the "privacy business" and maybe the Commission feels that they should be. He explained that the Commission would need to change the Ordinance in order to have the BOAR settle privacy issues, which would then create "a whole new ball game" for them. The Board of Architectural Review reviews historic compatibility, not neighborhood claims of who is looking into whose yard, adding that if this were the case, then the number of staff would need to be doubled and the public hearings would become longer. Mr. Murphy said that his client has complied with every required procedure and should not be penalized by changing the procedure. His client has doubled the landscaping on this property. He said that the BOAR has reviewed this case to ensure that this request is architecturally compatible with the area. This appeal pertained to the deck, not to the landscape plan that has been approved by the staff. He said that his client has complied with the procedure and the Commission should not place this burden on him because they believe the BOAR should be looking at the privacy of neighbors or any other issues that are not related to historic preservation.

Kevin Murphy said that he appreciates Mr. Cravens' comments, but the motion to link the existing landscaping and the old and new decks together would not cost Mr. Jones a cent. He is looking for the added assurance that the landscaping will remain should there be a future property owner.

Ms. Blanton asked if adding the landscaping to the Certificate of Appropriateness would make it in perpetuity versus the staff approving the landscaping plan for that moment in time. Ms. Kerr said that there are two separate approaches. The permit that was issued for the landscaping is good for one year and can be changed at any time. She then said that the property owner had elected to plant that material and they can elect to remove it. She added that if the Board's intention was to have a required planting strip, it would be ordered as a condition on the COA. She said that this type of situation has not come in front of the BOAR in the past.

Ms. Blanton said that this would be a dramatic step to take. Ms. Kerr explained that if a tree is larger than 10" in diameter then that tree cannot be removed unless it is reviewed by the Board, at which time a permit would be issued. In that situation it is considered to be in perpetuity. Ms. Blanton reiterated that the Commission would be taking a dramatic step; and as it was previously stated, this as well as the other issues, can be better addressed rather than making the Board take on landscaping and privacy issues. She then said that she has lived in older neighborhoods and the property owner sacrifices privacy to live in these areas. Trying to ensure everyone's privacy, when there is only 4 feet between each home, will not happen; and this is the wrong place to work on that issue.

Mr. Penn said that he does not believe it is in the Planning Commission's purview to say that this is the way the BOAR should go in reviewing these types of requests. He then said that the Commission could make a recommendation; but to try to make the BOAR enforce this there needs to be more vetting. He added that the Planning Commission does not have the authority to require that of the BOAR, and this is a big step for the Commission to take just because of this one case.

The motion carried 4-3 (Blanton, Cravens and Penn opposed; Beatty, Brewer, Berkley and Mundy were absent).

- B. PLANNING COMMISSION WORK SESSION** – At the conclusion of today's meeting, a work session with the Long Range Planning staff, related to the ongoing update to the Comprehensive Plan, was conducted. Minutes of that work session are contained in a separate document.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. NEXT MEETING DATES

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 21, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 27, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 28, 2013
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	April 4, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	April 4, 2013
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	April 11, 2013

- X. ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 3:42 p.m.

Note: Following the adjournment, the Commission conducted a work session on the Comprehensive Plan.

Mike Owens, Chair

Lynn Roche-Phillips, Secretary